

Chesapeake Bay Local Assistance Board
Local Program Review Committee for the Southern Area
Chesapeake Bay Local Assistance Department
101 N. 14th Street, 17th Floor, James Monroe Building
Richmond, Virginia
Tuesday, February 17, 2004

MINUTES

Members Present:

The Honorable Colin D. Cowling
The Honorable David C. Froggatt, Jr.
The Honorable Daniel B. Nice
The Honorable Michael V. Rodriguez

Members Absent:

The Honorable Sue H. Fitz-Hugh

Staff Present:

Mr. C. Scott Crafton, Acting Executive Director
Ms. Martha Little, Chief, Environmental Planning
Ms. Shawn Smith, Principal Environmental Planner
Mr. Ryan Link, Principal Environmental Planner
Mr. Brad Belo, Senior Environmental Planner
Mr. Jakob Helmboldt, Senior Environmental Planner
Ms. Carolyn J. Elliott, Administrative Assistant

Local Government Officials Present:

Henrico County

Mr. Keith White, Environmental Engineer

New Kent County

Ms. Courtney Fisher, Environmental Planner

York County

Ms. Anna Drake, Manager of Environmental Programs

Mr. Cowling called to order the Southern Area Review Committee Meeting at 2:00 p.m. He called the role, noting that there was quorum. Mr. Cowling noted that due to inclement weather conditions he would ask that the locality representative who had to travel the longest distance away be permitted to go first on the agenda.

Mr. Cowling recognized Mr. Brad Belo for staff's presentation for York County.

Mr. Belo introduced Ms. Anna Drake, Manager of the Environment Program and York County's Chesapeake Bay Act Coordinator. He went on to thank Ms. Drake and Ms. Connie Bennett, York County's Stormwater Management Engineer, for their active participation in the County's compliance evaluation.

Mr. Belo said the Department held its first meeting with County staff in August 2003 during which staff reviewed a copious amount of materials provided by Ms. Drake for the compliance evaluation. He said a second meeting was held at the County's office in September 2003 to allow Department staff to review 14 Bay Act related site plans, and three site plans were selected for site visits that were conducted in November 2003.

Mr. Belo explained the County's strong environmental stewardship ethic is characterized by the effective implementation of not only the Chesapeake Bay Preservation Act requirements but also the enforcement of additional water quality protection requirements found in the County's subdivision, zoning, erosion and sediment control and wetland ordinances.

He said the County works with applicants in pre-application meetings to minimize potential CBPA conflict at the earliest stages of development possible, and the County is also making great strides in CBPA public education as was recently demonstrated with the completion of the video entitled Vegetated Buffers: Protecting a Vital Resource, which was shown at the last Board meeting.

He went on to say that despite the County's conscientious implementation of the Chesapeake Bay Preservation Act requirements, Department staff identified four elements of the local program that do not appear to fully comply with the Act and Regulations.

First, Mr. Belo said, the Department recommends that the those portions of the County's subdivision ordinance that address Chesapeake Bay Preservation Act requirements be amended to ensure consistency with the most recent changes in the both the Chesapeake Bay Preservation Area Regulations and the County's recently amended environmental management overlay area zoning district.

He said second, the Department recommends that the County document the submission of all Water Quality Impact Assessments submitted for any land disturbance, development and redevelopment in Resource Protection Areas and for development in Resource Management Areas when required. He also said the Department acknowledged that the County staff has been conscientious in requiring that WQIA elements be included in the various site planning documents which are submitted as part of the plan of development review process. However, an organized WQIA submission process will facilitate not only the formal exception process, which is dependant on the findings of a WQIA, but also the Department's ability to effectively assess the County's implementation of this important element of the Regulations.

Mr. Belo went on to say that third, the Department recommends that the County develop a program to ensure the regular or periodic maintenance of stormwater best management practices in order to ensure their continued proper functioning over the long-term. While the

County requires BMP maintenance agreements for all BMPs it is currently unable to ensure their proper function except through complaint calls. Because the water quality protection benefits of stormwater BMPs is dependent on the BMPs' proper function, regular maintenance of these facilities is essential for ensuring the continued long-term benefits of these facilities.

Mr. Belo advised that the Department recommends that the County amend the definition of marina, found in the zoning ordinance, to ensure that non-water dependent facilities like restaurants and parking lots are not considered by-right development permitted in the RPA. The Board's guidance documents and Department staff have been consistent in disallowing non-water dependant marina facilities in the RPA. Although the County has enforced the spirit of this prohibition, Department staff is concerned that the current wording of the marina definition may have unintended consequences by creating a loophole in the County's RPA development restrictions.

Mr. Belo noted that in addition to these four recommendations the Department is making several suggestions intended to facilitate the County's implementation of its Bay Act program. Although the implementation of the Department's suggestions is voluntary, the Department staff feels that these suggestions will help improve an already highly effective Bay Act program.

Mr. Belo concluded his comments saying the County is to be commended for the implementation of its Bay Act program, and county staff has proven to be open-minded and willing to recognize and address the concerns of the Department. He explained the County has already made progress on some of the Department's recommendations and suggestions made during the compliance evaluation meetings. However, despite the effective implementation of the local Bay Act program, the Department staff recommends that the Southern Area Review Committee find that certain aspects of the County's implementation of its Phase I program do not fully comply with the Act and Regulations. The Department staff recommends that the County fully address the four recommendations included in the staff report no later than March 31, 2005.

Mr. Cowling thanked Mr. Belo for his report and asked Ms. Drake if she wished to respond to the comments.

Ms. Drake thanked Mr. Cowling for moving the program to the beginning of the agenda and staff for their assistance. Ms. Drake stated that the County had been unable to quickly respond to Mr. Belo's report and had found three areas that needed some changes. The necessary changes were highlighted in copies of the compliance evaluation staff report provided by Ms. Drake.

Ms. Drake pointed out the following correction on page 2., second paragraph, item (5):
“~~areas with highly erodible soils identified as containing either hydric soils or soils with moderate or high shrink swell potential,...~~”

She said on page 3, second full paragraph should be changed to read , “ ...County staff ~~is in the process of redrafting~~ has redrafted the County's Chesapeake Bay Act Ordinance Boundaries map to address the Department's concerns and the York County Board of

Supervisors adopted the map on December 16th, 2003 with the revised EMA Ordinance. The map is now available ~~It is expected that the revised map will be available by March 2004 for Staff review.~~

Ms. Drake also requested the following change on page 8, fifth paragraph: “The County ~~requires~~ recommends all residential subdivisions to include...”

Ms. Drake stated that the County agreed with all of the Staff’s recommendations except for the recommendation regarding the marina definition. She provided a copy of a memo written by the Zoning Administrator, who is also the Assistant County Administrator. She advised that the Zoning Administrator and the County Attorney agree that the definition of a marina does not need to be changed, and that the appropriate place for regulations regarding marinas is in the Environmental Management area ordinance and in the site plan ordinance. She said that they believe that with this clarification, the report, and the memo, it will be clear that all non-water dependent components of marinas must be located outside the RPA. She respectfully requested that the Department drop the requirement to change the definition of marinas for the reasons given by the Administration of York County. She said there would not be a problem meeting the staff’s three other Recommendations by the deadline of March 31, 2005.

Mr. Cowling called for comments or questions.

Mr. Crafton said that he had spoken with Mr. Belo about the marina requirement and that the Department is satisfied with the documentation that Ms. Drake provided, specifically the memo from the York County Zoning Administrator, and their efforts to keep non-water dependent activities out of the buffer.

Mr. Nice asked if a marina could put a non-water dependent activity in the buffer if they needed to.

Mr. Crafton responded that a marina could only do this through the exception process.

Mr. Cowling asked if any encroachment into the buffer would automatically go to the Board of Zoning Appeals (BZA) and whether this information in the ordinance.

Ms. Drake responded that an encroachment into the buffer would go to the BZA unless it could be handled by other administrative means, as is permitted by the Regulations, and that the information is in the zoning ordinance, is very specific, and complies with the Chesapeake Bay requirements.

Mr. Crafton asked Ms. Little and Ms. Smith if it was appropriate to strike the fourth Recommendation regarding the marina definition. Ms. Little and Ms. Smith agreed, but requested that the discussion regarding the County’s marina definition remain in the staff report.

Mr. Cowling asked that the memo be provided to all Board members. Ms. Little agreed.

Mr. Nice asked if he understood correctly that York County already did more than was required by the Bay Act and Regulations. Mr. Belo responded that in several ways they do and are very proactive at enforcing the Bay Act requirements.

Mr. Crafton commented that staff is trying to review the localities and bring before the committees deficiencies of the localities and where improvements needed to be made. He said there are other authorities in the Code of Virginia that allow localities to address environmental concerns. Mr. Crafton said that when a locality is doing things more aggressively than the Bay Act requires, typically they are doing them under other authorities.

Mr. Crafton suggested that in the future, staff should point out in their reports when a locality is doing more than is required by the Bay Act and under what authority.

Mr. Cowling asked that staff clarify in their reports if localities have adopted water quality protection measures enabled by portions of the Virginia Code other than the Chesapeake Bay Preservation Act so that the public is aware that many of the water quality protection efforts being pursued by the local governments are not under the Board's review or responsibility. Mr. Cowling commented that he had received a number of comments from individuals who complained that some localities require higher development standards and additional water quality protection measures than other localities.

On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends that the Board find that certain aspects of York County's implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that York County undertake and complete the three recommendations contained in the staff report no later than March 31, 2005.

Ms. Smith commented that staff is requesting that the City of Richmond's compliance evaluation be deferred until the next Committee meeting because the report is currently being updated by staff with assistance from the City. She stated that the draft was provided to the City staff in a timely manner, but that there was some miscommunication with the City staff and the report contains some misinformation. She noted that Mr. Alex Adams was meeting with Ms. Debbie Byrd to revise the report, and that at this point it would be very confusing for the Committee to try to review the report. She completed her discussion by requesting that the City of Richmond's compliance evaluation be brought to the Committee at their May 2004 meeting.

Mr. Cowling called for a motion to table the agenda item with reference to the City of Richmond. On a motion by Mr. Froggatt, seconded by Mr. Nice, the report for the City of Richmond was tabled. Mr. Cowling called for the vote. All members voted aye. Mr. Cowling advised the item had been tabled.

Mr. Cowling asked Mr. Jakob Helmboldt for staff's presentation for New Kent County.

Mr. Helmboldt continued with staff's report for New Kent County. Mr. Helmboldt introduced Ms. Courtney Fisher, Environmental Planner for New Kent County.

Mr. Helmboldt advised that New Kent County adopted their local program amendments on March 10, 2003, and the County's revised Chesapeake Bay Preservation Area ordinance addressed all but one of the required changes.

He noted that the County did not amend their definition of "substantial alteration" to reflect the definition in the revised regulations prior to adopting their revised ordinance and, as written, the County's definition pertains to expansion or modification of a building or development within any Chesapeake Bay Preservation Area. He said the revised regulations define *Substantial Alteration* as being applicable only to the Resource Management Area, and staff had thought that the necessary revision could be accomplished administratively but found that it cannot be made administratively.

He stated that the County indicated that it wanted to wait until after the Board's compliance evaluation before they make this relatively minor revision, in case there are other changes necessary for full consistency. He noted that this will allow the County's Board of Supervisors to make all necessary changes and proceed with a single adoption process.

Mr. Helmboldt noted that there were several suggested changes to the County's Bay Act ordinance that are intended for clarification and are not required for their ordinance to be found consistent. He summarized these suggestions to include a provision requiring that the stormwater management calculation procedures be the same for both pre- and post-development; to revise the County's sewer ordinance to include the option for on-site septic disposal system inspections in lieu of pump-out, so that it is consistent with their Bay Act ordinance; to revise Sec. 94-40(c)(4) to address an erroneous reference to Sec. 94-44(a) ; and to revise Sec. 94-42(a)(4) to stipulate that the waiver pertains only to the requirement for certification by a professional engineer or certified land surveyor, not the requirement for an Environmental Site Assessment, when land disturbance exceeds and area of 5,000 square feet.

Mr. Helmboldt said the County is to be commended for adopting their revised ordinance so close to the original deadline of March 1, 2003.

Mr. Cowling noted the date on the Resolution's last page said December 31, 2003 and asked if that should have been 2004. Mr. Helmboldt responded that it should have been.

Mr. Cowling called for comments. Ms. Fisher commented that New Kent is frustrated because they tried very hard to get the document correct the first time. They are willing to work toward bringing it to CBLAD's standards, but they are disappointed that some of these suggestions were not caught in any of the other reviews, even though the ordinance had been reviewed by Department staff on a number of occasions. She said she hoped everyone was aware that these issues have to go back before their full Board. She said the recommended changes would be made and requested that CBLAD staff give New Kent a time frame for when the compliance evaluation will begin, so they have an opportunity to address all of items of concern at one time.

Ms. Smith suggested to Mr. Helmboldt that changes could be made to the schedule to accommodate New Kent County so that their compliance evaluation would occur sooner rather than later.

Mr. Cowling asked why, with several suggested changes for clarification, that the motion only contains one item. Mr. Crafton responded there was only one item that needed to be addressed for consistency.

Mr. Cowling asked if including suggestions that are not required for legal reasons isn't simply confusing the issues for localities. He said it appears that Ms. Fisher felt compelled to address all the recommendations, when in fact only one item needed to be addressed for consistency, and the resolution supports only that item.

Ms. Fisher commented that the suggested changes would help the readability of the text.

Mr. Cowling called for further discussion. There was none.

Mr. Cowling called for the vote. On a motion by Mr. Froggatt, seconded by Mr. Nice, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that New Kent County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the condition that the County undertake and complete the one recommendation in the staff report no later than June 30, 2005.

Mr. Cowling recognized Mr. Helmboldt for staff's presentation regarding Henrico County. Mr. Helmboldt introduced Mr. Keith White, Environmental Engineer for Henrico County.

Mr. Helmboldt said Henrico County adopted their local program amendments on November 12, 2003, and that the County's revised Chesapeake Bay Preservation Area ordinance addressed all of the required changes set forth in the revised regulations

He said staff noted several suggested changes to the County's Bay Act ordinance that are intended for clarification and are not required for their ordinance to be found consistent. He said the suggested changes are as follows:

The first staff suggestion was that the County include a reference to the Regulations as providing the authority, purpose and intent behind the County's Bay Act Ordinance.

Second, staff suggested that the County revise Sec. 24-106.3(d)(3)d. to clarify the types of permitted development activity requiring a Water Quality Impact Analysis by including *redevelopment or land disturbance* in RPAs as also requiring a WQIA.

Third, staff suggested that the County revise 24-106.3(f)(2)d by deleting items 4 and 5. Under the revised Section 9 VAC 10-20-130.5.b of the Regulations, items (4) and (5) are not required in local ordinances since they apply to the Soil and Water Conservation District, and that the County revise Sec. 24-106.3(g)(2) by changing the phrase *proposed use and development* to *proposed use or development*, to more accurately reflect the intent of the regulations.

Finally, staff suggested that the County revise the ordinance to enable the County to require WQIAs for projects outside of RPAs (such as development occurring in RMAs or other sensitive areas) when the County deems it necessary for determining what will provide appropriate water quality protection. He said that the County is to be commended for adopting their revised ordinance prior to the deadline of December 31, 2003

Mr. Cowling called for further comments. There were none.

Mr. Cowling called for a motion. On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Henrico County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Mr. Helmboldt continued with staff's presentation regarding Charles City County. Mr. Helmboldt informed the Committee that Charles City County did not send a representative due to staff shortages that day, but were comfortable with the review proceeding given that there were no recommendations necessary for consistency.

Mr. Helmboldt began his presentation saying the County adopted their local program amendments on September 23, 2003, and the County's revised Chesapeake Bay Preservation Area ordinance addressed all of the required changes set forth in the revised regulations.

Mr. Helmboldt advised that staff has noted several suggested changes to the County's Bay Act ordinance that are intended for clarification and suggested that the County revise their ordinance by deleting Sec. 110.C.1.d (stormwater management and flood control facilities), since the County does not have an adopted stormwater management program.

He said staff suggested the County revise Sec. 110.C.2.6 by deleting items d and e. He noted that under the revised regulations, those items do not apply to the local ordinances since they apply to the Soil and Water Conservation District, not to the locality itself.

He said staff suggests that the County revise the Plan of Development Process, Section 111, to stipulate that permitting requirements apply to both building *and grading* permits, and also that the County revise their ordinance to make specific reference to appropriate departments or the municipality, as appropriate, in place of general terms such as "locality", "local government", etc.

Mr. Helmboldt said the County is to be commended for adopting their revised ordinance prior to the deadline of December 31, 2003

Mr. Cowling called for questions or discussion. There were none.

Mr. Cowling called for a motion. On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Charles City County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations

Mr. Cowling asked Ms. Smith if she would go ahead and provide the staff reports for all of the Eastern Shore localities.

Ms. Smith began with staff's report for the Town of Cape Charles noting the Town adopted its revised Phase I program on November 12, 2003. She said the Department worked with the Town in developing the revised ordinance and there are no recommendations for consistency.

She explained the Town did not revise its CBPA maps, including its original IDA adjacent to the Town harbor area and Kings Creek Marina, but did include the requirement for the onsite determination of stream flow characteristics, as required under the regulations. She noted that the Town's Board of Zoning Appeals was named as the body to hear formal exception requests, should that need arise.

Mr. Cowling called for comments. There were none.

Mr. Cowling called for a motion. On a motion by Mr. Nice, seconded by Mr. Froggatt the Committee voted 4-0 for the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Cape Charles' amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations

Ms. Smith continued with the presentation for the Town of Parksley advising that the Town Council adopted its revised Phase I program on December 8, 2003.

She said the Department worked with the Town in developing the revised ordinance and there are no recommendations for consistency. She explained that the Town did not revise its CBPA maps, but did include the requirement for onsite determination, as required under the regulations. She went on to explain the Town also retained the general zoning requirements that

apply the 5-year pump out and enhanced erosion and sediment control requirements to the entire jurisdiction, including areas of the town outside of their CBPA.

Ms. Smith noted the Town's Board of Zoning Appeals was named as the body to hear formal exception requests, should that need arise.

Mr. Cowling called for comments. Mr. Froggatt asked if Ms. Smith knew the exact number of acres in the Town. Ms. Smith responded that she did not know the exact number of acres, but she did know it was small and went on to describe some of the physical features of the Town.

Mr. Cowling called for further questions. There were none.

Mr. Cowling called for the vote. On a motion by Mr. Froggatt, seconded by Mr. Rodriguez, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Parksley's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Ms. Smith continued with staff's presentation for the Town of Hallwood explaining that the Town of Hallwood adopted its revised Phase I program on November 24, 2003, and that the Department worked with the Town in developing the revised ordinance and there are no recommendations for consistency.

She said the Town did not revise its CBPA maps, including its original IDA designation adjacent to an industrial area in the Town, but did include the requirement for onsite determination as required under the regulations, and the Town's Board of Zoning Appeals was named as the body to hear formal exception requests, should that need arise.

Ms. Smith explained that this Town is also in Accomack County and is also small. She said that they have one stream that has an RPA adjacent to it, and they have a population of around 200 people.

Mr. Cowling called for comments. There were none.

Mr. Cowling called for the vote. On a motion by Froggatt, seconded by Mr. Rodriguez, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Hallwood's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Ms. Smith continued with staff's presentation for the Town of Saxis noting that it was also located in Accomack County, in the northwestern part of the County, and is actually an island. She went on to say the Town of Saxis adopted its revised Phase I program on November 3, 2003. The Department worked with the Town in developing the revised ordinance, and there are no recommendations for consistency.

She said the Town did not revise its CBPA maps, including its original IDA designation adjacent to the working waterman's harbor area in the Town, but did include the requirement for onsite determination as required under the regulations.

She said the Town's Board of Zoning Appeals was named as the body to hear formal exception requests, should that need arise, and the Town was like Tangier but surround by marsh instead of ocean.

Mr. Cowling called for comments. There were none.

Mr. Cowling called for the vote. On a motion by Froggatt, seconded by Mr. Rodriguez, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Saxis' amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Ms. Smith continued with staff's presentation for Accomack County saying Accomack County adopted its revised Phase I program on November 19, 2003. The Department worked with the County in developing the revised ordinance, and there are no recommendations for consistency.

She said the County did not revise its CBPA maps, but did include the requirement for onsite determination as required under the regulations.

She also advised the County's Board of Zoning Appeals continues to be named as the body to hear formal exception requests, and the County decided to require exception requests to any of the Overlay District to be considered by the BZA.

Ms. Smith added that in addition to making the required revisions, the County included more specific information relating to appropriate buffer vegetation and how to measure the buffer on a site.

Mr. Cowling called for comments. There were none.

Mr. Cowling called for the vote. On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Accomack County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations..

Mr. Cowling commented that Mr. Keith Bull, previous Director of the Chesapeake Bay Local Assistance Department for about five years, is now County Administrator for Accomack and this is probably the reason these little towns zip on through. He added that there is also a very good staff person helping them by the name of Sandy Manter.

Mr. Cowling thanked Ms. Smith for her reports and recognized Mr. Ryan Link for staff's report for the City of Suffolk.

Mr. Link advised that the City of Suffolk adopted their revised Chesapeake Bay Preservation Overlay District on November 19, 2003 and that staff was recommending that it be found consistent with the Act and Regulations subject to the condition that the City adequately address the six conditions contained in the staff report.

He said three of the six conditions consist of definition and/or reference revisions. In addition, he noted that the City should remove any reference to modifying or reducing the buffer within the overlay language, include performance criteria limiting impervious cover in the overlay language, and revise a graphic included in the document that refers to an "area of allowable BMP construction" within the buffer.

Mr. Link said staff recommended that these conditions for consistency be completed no later than September 30, 2004, and advised that that he had spoken to Ms. Cindy Taylor, Assistant Director of Planning for the City, about the recommendations. While she could not attend the meeting, she said that the City was fine with the recommendations and should have no problem completing them by the September deadline.

He noted that Page 5 of the staff report contained a mis-typed date of July 2004 as the deadline. He stated it should be September 30, 2004 and that he would make the change before it is sent to the full Board.

Mr. Cowling called for further comments. Mr. Nice confirmed the date to be September 30, 2004. Mr. Cowling confirmed that the draft resolution in the staff report said September 30, 2004, and asked if the City had any problem complying with the conditions.

Mr. Link responded that as he stated, Ms. Taylor had called to say she could not be present, but that the recommendations were fine with the City and that the City should have no problem meeting the deadline

Mr. Cowling called for the vote. On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that City of Suffolk's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the condition that the City adequately address the six conditions contained in the staff report no later than September 30, 2004.

Mr. Cowling recognized Mr. Brad Belo for staff's report for James City County.

Mr. Belo advised that James City County adopted revisions to its Phase I Bay Act program on November 25, 2003. The County's revised Bay Act Program addresses all of the required Regulation changes, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests.

He said the County chose to adopt the Board-approved definition of "water body with perennial flow." In addition to making all required changes, the County will now require the posting of permanent signage identifying the landward limits of the RPA.

He explained the County's ordinance revisions require that the Chesapeake Bay Board, which is comprised of the members of the James City County Wetlands Board, hear exception requests to the RPA development criteria. The environmental program director is charged with providing exceptions, where appropriate, to all sections of the ordinance other than the RPA development criteria. The encroachment of principal structures and necessary utilities in the RPA is administratively addressed, as permitted by the Regulations, on lots platted prior to January 1, 2004.

He said the Department is suggesting one amendment to the County's ordinance. The County chose to make its vegetative protection requirement more stringent than the general performance criteria included in the Regulations. However, he noted that a supporting sub-paragraph, states that "existing trees over 12 inches in diameter at breast height shall be preserved except in impervious areas and as necessary to accommodate grading." He stated that staff is concerned that this statement will be interpreted to mean that only trees with a diameter at breast height (d.b.h.) of more than 12 inches will need be preserved and that the Department suggests that this sub-paragraph be amended to clarify that trees over 12 inches in diameter at breast height will receive additional protection above and beyond the general performance criteria, which requires existing vegetation to be preserved to the maximum extent practicable.

Mr. Darryl Cook, James City County's Chesapeake Bay coordinator, who could not attend the meeting, had asked that Mr. Belo present the County's response to the Department's suggestion. Mr. Belo said Mr. Cook's email indicates that it was never the County's intention to limit vegetation protection only to trees greater than 12 inches d.b.h.; rather it was the County's intention to provide additional tree protection for large trees. In actual application, Mr. Cook indicates that this subparagraph has not been much of a factor in protecting large trees or justifying the removal of smaller vegetation. Mr. Cook's concluding sentence indicates that the County is willing to amend the sub-paragraph, as suggested by Department staff, or eliminate it entirely during the next ordinance amendment.

Mr. Belo concluded his report noting that, the Department staff recommends that the local Phase I program revisions, adopted by James City County on November 25, 2003, be found consistent with the Chesapeake Bay Preservation Act and Regulations.

Mr. Cowling called for further comments. There were none.

Mr. Cowling called for the vote. On a motion by Nice, seconded by Mr. Rodriguez, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that James City County's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Mr. Cowling asked Mr. Belo to continue with staff's report for the City of Williamsburg.

Mr. Belo explained the City's of Williamsburg adopted revisions to its Phase I program on December 11, 2003, and that the revised Bay Act program addresses all of the required Regulation changes. The City did not include the requirements for flood control and stormwater management facilities because city staff felt, and the Department staff agreed, that the Williamsburg Stormwater Management Plan, which was adopted by the City on January 8, 1998 and approved by the CBLAD Board September 27, 1999, adequately addressed the construction of these facilities.

Mr. Belo explained that the City administers the majority of the exceptions to its Bay Act program through the board of zoning appeals. A *de facto* administrative waiver for the program's stormwater management requirements, which has always been included in the City's Phase I program, is provided for all one-family and two-family dwellings on lots that were recorded and served by streets and utilities that were constructed prior to adoption date of the City's program. He noted the City's planning commission is empowered to exempt roads and driveways proposed for construction in the RPA that are not exempted elsewhere in the ordinance.

Mr. Belo concluded his report noting that Staff recommended that the local Phase I program revisions, adopted by the City of Williamsburg on December 11, 2003, be found consistent with the Chesapeake Bay Preservation Act and Regulations.

Mr. Belo added that earlier that morning he had spoken with Mr. Reed Nester, the City's Chesapeake Bay Act coordinator. Mr. Nester indicated that he was happy with the application of the City's new ordinance revisions since it had been adopted in December and implemented on January 1, 2004. One difference Mr. Nester noted between the implementation of the old and new ordinances is that City staff is spending more time than it previously had on making field assessments of RPA wetlands and water bodies with perennial flow.

Mr. Cowling commented that the Board had anticipated that more time would be involved under the new ordinances.

Mr. Crafton asked Mr. Belo if, since the City of Williamsburg had walked all of their streams several years ago, they expected there to be much change in the number of RPA features and streams identified.

Mr. Belo responded that the city was hoping there would not be much change in the amount of RPA area. Mr. Belo noted that the City is interested in doing a definitive stream delineation so City staff won't have to do anymore field assessments – just get it done once and for all with a Board approved mapping method. He stated that the City needs to find funding for such a mapping project. Mr. Belo noted that Department staff is looking for potential funding sources that could be used to help the City achieve this goal in the future.

Mr. Cowling called for further questions or discussion. There were none.

Mr. Cowling called for the vote. On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Williamsburg's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Mr. Cowling thanked Mr. Belo for staff's report and recognized Ms. Shawn Smith for the presentation for the Town of Exmore.

Ms. Smith opened her comments saying the staff is recommending that the Town's revised Bay Act program be found inconsistent, and further that the fifteen recommendations for consistency be addressed by the Town no later than September 30, 2004.

She explained that the consistency recommendations relate to several general categories, including the Town's revised CBPA boundary, the Town's attempt to require certain performance criteria town-wide to compensate for a very small CBPA and, within its Bay overlay district, problems with definitions, RPA requirements and criteria, and administrative waivers and exception requirements.

She provided the background on the Town's Bay Act program, noting the Town was originally found consistent in 1996, after meeting the one outstanding condition from a previous review in 1994. She continued by stating that in October 2000, the Town expanded its land area through a boundary adjustment, and the Department began notifying the Town that they must modify their Bay Act program to address this new land area. She said the new area included two stream segments that require RPAs adjacent to them, and that previously there were no RPAs in the Town, so they had only an RMA program.

She went on to say that staff corresponded with the Town about the required revisions to address the new land area on a number of occasions, first working through the ANPDC Regional Planner and then working with the Town itself. She said that once the Regulations were revised, staff continued to attempt to work with the Town to revise its zoning ordinance to address the required changes.

She said the Town finally adopted its revised Phase I program on March 5, 2003, and that this revision included a significant reduction in its CBPA. Ms. Smith provided the members with a copy of a map showing their adopted map. She went on to say the Town's previous CBPA covered the entire Bay watershed of the Town, roughly one-half of the town area, and the new CBPA includes the RPA adjacent to the two stream segments, and an RMA that is 100-feet wide. She said it was important to note that that this CBPA essentially applies to only one parcel and on that parcel is a private school, Broadwater Academy.

Ms. Smith went on to explain that during development of the Town's revised ordinance and map, she noted that the Regulations require an RMA to be based on the presence of certain land types (9 VAC 10-20-90), and that nearly the entire Eastern Shore is characterized by highly permeable soils, a RMA land type.

She said she had a lot of conversations with the Town's consultant, and that he had stated his belief to the Town and to Ms. Smith, that the Town was under no compunction to adopt a CBPA that would encompass the entire Bay watershed within the Town, despite the presence of RMA land types throughout the Town area. She said after a number of discussions with the consultant and after it became apparent that he was not going to change his mind nor was the Town going to change their mind, she did tell him that the Board had, on previous occasions in the reviews of local Eastern Shore Bay Act programs, approved smaller CBPAs when those Towns included some of the more important performance criteria Town-wide. She said among programs previously approved with such provisions were those for Parksley, Onancock, Melfa, Painter, Eastville and Onley.

She noted that based on conversations with the consultant, and the fact that other towns on the Shore had small RMAs with certain of the performance criteria applied town-wide, she had offered this approach as a compromise to requiring a watershed-wide RMA for the Town. Ms. Smith pointed out that in each of the other towns the RMA they ended up adopting was more than 100 feet wide. She said that the RMA adopted by the Town of Exmore is by far the smallest RMA that has been adopted on the shore.

Ms. Smith went on to say that the Town's revised ordinance does appear to try to include requirements for erosion and sediment control, 5-year pump-out, reserve drainfields, and stormwater management, as well as the general criteria to limit land disturbance and impervious cover in Section XII-8 (General Performance Standards for Development and Redevelopment), which is contained within the Town's site plan requirements.

She said it also appears that site plans are required for any use and development in the town in all zoning districts except for single-family detached dwelling units, where a separate plat is submitted under the Town's Subdivision Ordinance. However, she noted that the way

these provisions are included in the ordinance is problematic in that there is no reference in the Site Plan Ordinance that requires site plans to conform to these standards nor is it clear that these standards are going to be implemented through review of a site plan. She said these provisions are just stuck in the ordinance with no method of implementation and that it did not appear that these provisions would be implemented at all. She also noted that the reference to erosion and sediment control requirements needs to be corrected to refer to Northampton County's Erosion and Sediment Control Ordinance, because the Town does not have a separate erosion and sediment control ordinance.

She continued by stating that the first two of the fifteen recommendations for consistency relate to ensuring that the performance criteria listed under Section XII-8 are indeed required to be shown and reviewed on all site plans, and that the proper reference is made to Northampton County's erosion and sediment control ordinance as one of the criteria that must be adhered to.

She said the Town's revisions to its Bay Act overlay district fall short of consistency in many areas. She summarized these deficiencies, starting with the definitions section, where she noted that the Town needs to include the definition of "substantial alteration" and revise the definition of "water body with perennial flow", since the current definition for "water bodies with perennial flow" excludes all farm ponds, which is not consistent with the Board's guidance. She continued by saying that the Town also needs to revise its RPA development criteria to specifically note that WQIAs are required for all land disturbances as well as development activities within the RPA, and to appropriately list the types of development activities that are permitted by right in the RPA and to include all required conditions that must be met for those development types.

She said the Town also needs to name its formal RPA exception board, include all required conditions for formal exceptions, and clarify that the permitted expansion of nonconforming structures in RPAs is limited to principal structures.

She finished her summary of the conditions for consistency by explaining that given the number of recommendations for consistency, coupled with the significant change in the Town's CBPA and the problems noted with this change, the Department is recommending that the Town's Bay Act program be found inconsistent, with a consistency deadline of September 30, 2004.

Ms. Smith stated that she had attempted unsuccessfully to talk to the Town, but had only been able to talk with their consultant. She said she received a copy of their adopted ordinance from Northampton County and that the Town could not find the Bay Act overlay district language in their adopted ordinance, nor did they know what was in it. She said, like many small towns on the Eastern Shore, they really don't appear to have any idea of what they are doing. She said that she tried to work with them, had tried calling them, and had stopped by, but she has had absolutely no success in meeting with anyone.

She said that on previous local program reviews where there was a recommendation for inconsistency, the Board has directed staff to send letters to all Town Council members, via certified mail, to notify them of the seriousness of a finding of "inconsistent." She noted that this

had been done some years ago when the Department and Southern Area Review Committee was recommending that the Town of Bell Haven be found inconsistent.

Mr. Crafton asked if he understood correctly that they seem to have made an attempt to apply performance criteria across the Town, but the problem is that the linkage isn't clear.

Ms. Smith responded that Mr. Crafton was correct, and that it is not clear that the performance criteria are indeed applied town-wide. She said that it appeared that the Town took some of their requirements and put them at the end of their site plan requirements, but included no references to these requirements in the list of required elements for a site plan nor is there any references to how to review or approve a site plan to meet these performance measures. She said it would be better if they put these criteria under general zoning requirements like other Towns had done, so it would be clear that for any zoning or other activity these criteria must be met. She noted that the Town had located the language in a different spot, which doesn't make it clear that these criteria have to be implemented.

Mr. Crafton asked if this is something that could be easily cleared up. Ms. Smith responded that she believed the Town could fix it.

Mr. Crafton commented that Ms. Smith mentioned other Towns on the Shore in terms of small RMAs versus broader implementation, and asked if she had looked at the rest of the localities to see if anyone of the 84 Tidewater localities had adopted a 100-foot wide RMA. Ms. Smith responded that she did not know for sure who had done so. Mr. Crafton stated that he thought there may have been one but, again, he believed they had applied performance criteria across their jurisdiction.

Ms. Smith said that she could say with some certainty that if there were other localities that had smaller RMAs, it was because they did not have RMA land types. She said that the City of Falls Church originally had a 10-foot RMA, but there was no soils information for the City on which to base an RMA and that the City had essentially designated the flood plain as the limit of the RMA. She continued by noting that the Regulations revision includes earlier Board policy language regarding RMA designations. She reminded the Board members that at the time the revisions were underway, the Department stated that this new language regarding designation of RMAs should have no effect on localities because, at that time, all 84 localities had designated CBPAs that had been approved by the Board. She explained that now this policy language relative to RMA designations is part of the Regulations, and the Town of Exmore's revised RMA is not consistent with what is in the Regulations.

Mr. Cowling commented that Northampton County and all its Towns, with the exception of Cape Charles, has a joint planning and zoning ordinance. He asked if there is a County jurisdiction-wide Resource Management Area in place, can a Town within that County legally designate something less than jurisdiction-wide?

Ms. Smith responded it was her understanding that they have a Joint Planning Commission, but the Towns themselves make independent decisions about adoption.

Mr. Cowling responded that everything they do has to go through the Joint Planning Commission, but then upon adoption the Town Council has to meet with the Board of Supervisors and they both vote on it.

Mr. Crafton commented that a big part of the problem was there was no one to talk to at the Town.

Mr. Nice commented that he wondered if there was anyone over there to talk to, and he recalled that recently the Committee had given a locality some slack because they didn't have staff.

Ms. Smith responded that there just wasn't town staff. She said the Town did a boundary adjustment and probably had no idea what they were getting themselves into, which is similar to what happened in Cape Charles when Cape Charles annexed 2000 acres some 12 years ago. She said that the Town of Cape Charles was finally getting to a point where they can actually handle the additional responsibilities associated with the larger land area. She said she thought Exmore is in a similar situation, but to her knowledge the Town does not have a Town Manager; rather the Town has a Mayor and perhaps some part-time clerical staff. She said the Town hired a consultant to help with their revisions, but she didn't know if the consultant continues to be retained by the Town.

Mr. Cowling asked if the Planning District Commission was helping. Ms. Smith responded that the Planning District Commission had tried to work with the Town but had given up this effort because of the influence over the Town by certain townspeople.

Mr. Cowling noted that the boundary adjustment was done simply in order to pay for their police department, and that the Head Master of the School asked that they be annexed so they could be protected by the police of the Town.

Mr. Cowling commented that this situation is the same as heard earlier and probably there is a need to find them inconsistent and also to do as was suggested and communicate this proposed finding to all officials of the Town. He indicated that, the motion should direct Department staff to continue to take steps to work with the Town to find a solution.

Mr. Cowling asked who was helping all the Towns in Accomack. Ms. Smith responded that she had gotten zoning ordinances for some of the Towns in digital format from the PDC, and had actually made the required changes in the Town's ordinances and then sent these revised ordinances to the Towns for them to adopt. She said that, to date, she had not heard from Belle Haven, Bloxom, Melfa, or Onley and that she has had no verbal communication with any of these towns except for Onley, whose Town attorney did call and leave a message for her; but she has yet to actually talk with him.

Ms. Little suggested that a copy of the letter go to the Joint Planning Commission and everyone who sits on that body. Ms. Smith agreed.

Mr. Nice stated that he believed someone should really go over there and help them, because he could imagine that if they change personnel like the other counties, they don't know what to do or where to start. He said he was not saying that Ms. Smith had not tried to help, but rather that someone needed to go over there. Ms. Smith responded that she understood, and that she felt that the Towns in many ways are worse off than those localities with changes in personnel, because these towns often don't have staff to begin with.

Mr. Nice asked if that is the case, which individual was the Committee going after. Ms. Smith responded that was a good question, but that the Town itself would be found inconsistent.

Mr. Crafton suggested that this case is a little bit difficult because they don't have staff or the kind of the staff they have does not have the kind of knowledge needed to implement this type of program. He said one approach is to go ahead and make the finding, in order to keep the pressure on, to let them know that this is a serious issue, and to direct staff, through this window of opportunity, to work with them.

Ms. Smith commented that if they would send her a digital copy of the ordinance she would make the required changes and send it back for them to adopt – it could be that simple. Mr. Crafton commented that even though staff can be sent over to help, they really doesn't appear that there is anyone there to talk to. However, Shawn can do the leg work, as she has done for other localities.

Ms. Smith responded that Exmore is a little different, because there are political pressures that are being brought to bear in the Town. She said that she was under the impression that the Town simply doesn't want to do this and, furthermore, other resistance to adopting a consistent Bay Act program is there. She said the Town knew what changes were required for consistency and the fact that they adopted a Bay Act Ordinance that is this deficient, when Department staff sent the Town multiple letters stating the required changes for consistency in a very explicit manner, indicates that the Town does not take the matter seriously and further that the Board does not have the Town's attention.

Mr. Cowling called for further comments. Mr. Nice commented that he believed the Committee should recommend a finding of inconsistent as is indicated in staff's report, but to also include that staff would go down, sit down with them, and try to work this out. Mr. Froggatt commented that Mr. Nice's idea was better than just calling them, and wanted to include Mr. Nice's comments in a motion.

Mr. Cowling commented that Mr. Nice's suggestion should be included in the motion that had already been written. Mr. Froggatt agreed.

Ms. Smith commented that she would certainly try. Mr. Cowling asked Ms. Smith if she had heard anything from Nassawadox or Cheriton. She responded that they adopted the revised ordinances she sent them, and that actually Cheriton and Eastville had adopted their revised ordinances on February 4th, Nassawadox is scheduled to adopt on March 1st, and Northampton County had adopted their revised ordinance on February 9th.

On a motion by Mr. Nice, seconded by Mr. Froggatt, the Committee voted 4-0 for the following.

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Exmore's amended Phase I program be found inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations, and further that the Town undertake and complete the fifteen recommendations contained in the staff report no later than September 30, 2004. Furthermore, appropriate staff of the Chesapeake Bay Local Assistance Department should notify the town officials of the recommended finding of "inconsistent" and continue to attempt to meet with Town officials to assist them in making the changes needed to bring program into full consistency with the Act and Regulations.

Mr. Cowling noted there were no Local Program Reviews for Phase II Comprehensive Plans and action had already been taken on the City of Richmond and York County.

Mr. Cowling called for other business, and recognized Mr. Crafton for comments. He said the first Perennial Stream Determination seminar has been scheduled for April 19, 2004, which means bringing the experts in from North Carolina and Fairfax as instructors. The workshop is targeted at local governments. He explained one day of the seminar would be held in the James Monroe Building and three days in the field, one in Hampton Roads, one in Richmond, and one in Northern Virginia. He said the seminar would be free to the participants, and an RFP was out now to provide a video tape of the presentations that can be later distributed to the localities.

Mr. Crafton went on to say that members had asked about training, and staff is trying to schedule a Board Retreat for sometime in August. He said that Heather Mackey is in charge of this effort, and it would be a one-day event.

Mr. Nice asked if Mr. Crafton knew the location. Mr. Crafton responded that it would be best to hold it in Richmond if for no other reason than there are plenty of choices where it could be held without having to pay a whole lot. He reminded the Board that this training would have to be noticed and open to the public.

He said regarding the IDA guidance that the Policy Committee has been working on, another meeting has not been scheduled. In fact, he spoke with several stakeholder committee members who suggested that the proposal was so well received there may be no need to have another meeting, and that the Policy Committee could develop this into guidance language and have it circulated to the full Board. He advised that he had suggested at the earlier Northern Area Review Committee meeting that in order to fast track this and get it before them at the March Board meeting, where it may be adopted as official guidance, draft guidance will be circulated to the stakeholders-, giving them a short turnaround for further comments and to indicate whether they believe another meeting is needed. If no concerns are raised, the guidance would be mailed to all Board members, with telephone polling of the Policy Committee, and the matter could then be brought to the full Board at the March meeting. He said that he had spoken

with Mr. Roger Chaffe, the agency's legal council and to Secretary Murphy and his staff to keep them abreast of what is happening.

He noted that there were two pieces of legislation affecting the agency. The first was introduced by from Senator Wagner from Virginia Beach, a bill that would have expanded the Bay Act to all the bay basin of Virginia. He said that the bill was passed by indefinitely. .

He said there were two companion bills, one in the house and one in the Senate, that were introduced at the request of the Town of Vienna. He explained that at the time the Town of Vienna was adopting their ordinance revisions, residents were complaining and threatened to bring suit against the Town, and these bills would have provided that the Attorney General's Office provide Tidewater localities with legal council if they were subject to private law suits pursuant to the Bay Act requirements. He said one bill was killed due to the lack of a motion and the other was carried over. He said that he subsequently met with Delegate Steve Shannon, of Vienna, to discuss issues they were concerned about.

Mr. Crafton went on to explain Soil and Water Conservation Districts had budget amendments introduced in both houses to add back \$500,000 for grants to the Districts to continue development of Bay Act soil and water quality conservation plans on farmland within CBPAs. He said the Senate amendment is still alive and hopefully will be approved.

Mr. Crafton advised that the Secretary of Natural Resources has arranged for an agency head meeting in Martinsville area in Southwest Virginia on May 11, 2004, the date of the next Northern and Southern Area Review Committee Meetings. He asked the Northern Area Review Committee members to consider meeting on May 18th instead.

Mr. Nice suggested moving the meeting back a week to May 4, 2004.

Mr. Cowling said May 4th would be okay with him and all other members agreed to the May 4, 2004 date.

Mr. Crafton noted that James City County is in the process of mapping their streams using the North Carolina protocol, and have advised CBLAD that they would like to present to the Board a modified version of the protocol. He said that after testing the protocol, they have found that they need to change that target number of points.

Mr. Crafton explained that the guidance says that this information can be submitted to the Department for review and, if satisfied, the Department could approve it. He said the guidance does not say it has to go to the Board, but the question is this: the Act allows for the Executive Director to act on behalf of the Board when it is not in session; and the idea was raised that, in order to get an answer to the locality quickly without having to wait three months for the next Board meeting, the Director might be authorized to approve the staff report the request, and report the decision to the Board at their following meeting.

Mr. Nice asked if that meant the Director would make a decision before reporting to the Board. He said then Mr. Crafton would be reporting his decision. Mr. Crafton said yes, that was

one proposal. Mr. Davis' preference was that as these things come up, discussions be conducted with the members of the Policy Committee, sending them the materials to look at as well, and if they were comfortable with it, then a decision could be made.

Mr. Nice and several other members agreed that giving the information to the Policy Committee was a good idea and would provide a broader overview. Mr. Crafton commented that doing it this way would be good for Board accountability.

Mr. Cowling called for a motion to adjourn the meeting. Mr. Nice motioned. There being no other business, Mr. Cowling adjourned the meeting at 3:40 p.m.